

BOBBI W.Y. LUM-MEW 6299  
Regulated Industries Complaints  
Office  
Department of Commerce and Consumer  
Affairs  
State of Hawaii  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Suite 900  
Honolulu, Hawaii 96813  
Telephone: 586-2660

Attorney for Department of Commerce  
and Consumer Affairs

DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS  
MAY 28 9 48 AM '02  
HEARINGS OFFICE

DEPARTMENT OF COMMERCE  
& CONSUMER AFFAIRS  
STATE OF HAWAII

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RECEIVED  
PROFESSIONAL  
LICENSE DIVISION

BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,  
SURVEYORS, AND LANDSCAPE ARCHITECTS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the  
Architect's License of

GARY P. KOERNER,

Respondent.

) ENG 2002-3-L

)  
) SETTLEMENT AGREEMENT PRIOR  
) FILING OF PETITION FOR  
) DISCIPLINARY ACTION AND  
) BOARD'S FINAL ORDER; EXHIBIT  
) "1" AND "2"

HEARINGS OFFICE

JUL 16 1 58 PM '02

DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS

SETTLEMENT AGREEMENT PRIOR TO FILING  
OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

GARY P. KOERNER (hereinafter "Respondent"), and the  
Department of Commerce and Consumer Affairs, by and through its  
Regulated Industries Complaints Office (hereinafter "RICO") enter  
into this Settlement Agreement as follows:

WHEREAS, Respondent is licensed as an architect by the  
State of Hawaii, License No. AR 8269;

WHEREAS, RICO received information that disciplinary  
action had been taken against the Respondent in Nevada in  
February 2001. Attached as Exhibit "1" is a true and correct

copy of the Settlement Agreement and Order signed by the Respondent and the Nevada State Board of Architecture, Interior Design, and Residential Design;

WHEREAS, Respondent had notified the NCARB, the national agency that handles architectural renewals, about this disciplinary action and thought that was all he was required to do. A true and correct copy of his notification to NCARB is attached as Exhibit "2";

WHEREAS, Respondent submits that his company was contacted by a client to consider doing a project in Nevada and that they did some conceptual site planning and limited schematics to see if the site would work for the project. When the client decided to purchase the site, Respondent contacted the Nevada Board and was informed that the conceptual and schematic work constituted the practice of architecture in Nevada. A consent agreement was executed and a fine was paid. Respondent became licensed in Nevada in March 2001;

WHEREAS, among other things, Respondent may be in violation of Hawaii Revised Statutes (hereinafter "HRS") § 436B-19(15);

WHEREAS, Respondent understands he is subject to penalties, including but not limited to, revocation or suspension of his license if the violations alleged are proven at hearing;

WHEREAS, Respondent has been fully informed of the allegations which may be proven should this matter proceed to hearing;

WHEREAS, Respondent has been advised of his right to have an attorney represent him in this matter and has voluntarily elected to waive this right;

WHEREAS, Respondent's current address is 5401 N. Central Expressway, #300, Dallas, Texas 75205;

WHEREAS, Respondent acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against his architect's license;

WHEREAS, Respondent has been fully apprised of his right to a hearing pursuant to HRS Chapters 91 and 92, and has voluntarily elected to waive his right to a hearing; and

The parties hereto desire to settle this matter without a hearing;

NOW, THEREFORE, the parties agree, subject to the approval and order of the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects (hereinafter "Board") that:

1. Jurisdiction. The Board has jurisdiction over the subject matter herein and over the parties hereto.

2. Waiver of right to hearing. Pursuant to HRS § 91-9(d), Respondent voluntarily waives his right to a hearing and agrees to a disposition of this case in accordance with the terms of this Settlement Agreement.

3. No coercion or duress. Respondent enters into this Settlement Agreement freely and voluntarily and under no coercion or duress, and Respondent is fully aware that in so

doing, he is subject to disciplinary sanctions.

4. Fine Payment. Respondent agrees to pay a fine of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). Respondent shall pay this fine within 30 days of the approval of this Settlement Agreement by the Board. Payment shall be by cashier's check or money order payable to "DCCA Compliance Resolution Fund" and mailed to the Regulated Industries Complaints Office, Attn: Bobbi Lum-Mew, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment shall be delivered or post-marked by the 30th day to be in compliance with this Settlement Agreement.

5. Automatic revocation for failure to comply. If Respondent fails to comply with the terms of this Settlement Agreement, Respondent agrees that his license shall be automatically revoked without further hearing upon the filing of an affidavit by RICO attesting that Respondent has violated the terms of this Settlement Agreement.

6. Approval of the Board. Respondent is aware that this Settlement Agreement shall not become binding upon the parties unless and until it is approved by the Board.

7. No objection if Board fails to approve. If the Board does not approve and does not issue an order pursuant thereto, and requires instead that this matter be presented for administrative hearing before a hearings officer of the Department of Commerce and Consumer Affairs in accordance with HRS § 91-9, Respondent agrees that neither he nor his attorney

will raise any objection on any administrative or adjudicatory level on the basis that the Board has become disqualified to consider the case before it because of its review and consideration of this Settlement Agreement.

8. Ambiguities, if any, shall be construed to protect the consuming public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner which most completely protects the interest of the consuming public.

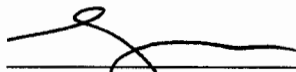
9. No reliance upon representations of RICO. Other than the matters specifically stated in this Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Agreement, and Respondent is not relying upon any statement, representations, opinions or promises made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Agreement or concerning any other matter or thing.

10. Complete Agreement. This Settlement Agreement:

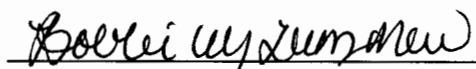
- a) is a complete settlement of the rights, responsibilities and liabilities of the parties hereto;
- b) contains the entire agreement of the parties; and

c) may only be modified, changed or amended by written instrument duly executed by all parties hereto.

DATED: 5.17.02, Texas, \_\_\_\_\_.

  
\_\_\_\_\_  
GARY P. KOERNER  
Respondent

DATED: Honolulu, Hawaii, MAY 28 2002.

  
\_\_\_\_\_  
BOBBI W. Y. LUM-MEW  
Attorney for Department of  
Commerce and Consumer Affairs

IN THE MATTER OF THE ARCHITECT'S LICENSE OF GARY P. KOERNER;  
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY  
ACTION AND BOARD'S FINAL ORDER; ENG 2002-3-L

APPROVED AND SO ORDERED:  
BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS, SURVEYORS,  
AND LANDSCAPE ARCHITECTS  
STATE OF HAWAII

RUSSELL Y.J. CHUNG  
Chairperson

July 11, 2002  
DATE

Laurel mau nahme  
LAUREL MAU NAHME  
h. ~~Vice~~ Chairperson

ARNALDO E. PREPOSE

Theodore E. Garduque  
THEODORE E. GARDUQUE

Randall M. Hashimoto  
RANDALL M. HASHIMOTO

Ken K. Hayashida  
KEN K. HAYASHIDA

Lester H. Inouye  
LESTER H. INOUE

JAY ISHIBASHI

GARY E.K.T. LEE ALFREDO EVANGELISTA

Mike Y. Miura Robert Akinaka  
MIKE Y. MIURA ROBERT AKINAKA

Wallace T. Oki  
WALLACE T. OKI

KEN OTA

Oscar Portugal  
OSCAR PORTUGAL

Carol S. Sakata  
CAROL S. SAKATA

STATE OF TEXAS

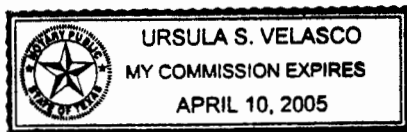
COUNTY OF

Dallas

)  
) SS.  
)

On this 17<sup>th</sup> day of May, 2002,

before me personally appeared GARY P., KOERNER, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.



Ursula S. Velasco

Name:

Notary Public, State of Texas.

County of Dallas

My Commission expires: 4-10-05



**BEFORE THE NEVADA STATE BOARD OF ARCHITECTURE,  
INTERIOR DESIGN AND RESIDENTIAL DESIGN**

RECEIVED

FEB 2 2001

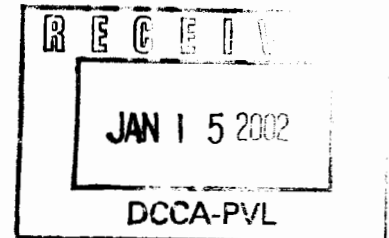
NEVADA STATE BOARD  
OF ARCHITECTURE

\*\*\*\*\*

|                                      |   |
|--------------------------------------|---|
| Nevada State Board of Architecture,  | ) |
| Interior Design & Residential Design | ) |
|                                      | ) |
| Complainant                          | ) |
| versus                               | ) |
|                                      | ) |
| GARY P. KOERNER,                     | ) |
| Three Architecture, Inc.             | ) |
| Nonregistrant                        | ) |
| Respondent                           | ) |

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Case Number: 01-020N



**Settlement Agreement and Order**

WHEREAS, the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN, (BOARD), has filed and properly served notice of an administrative complaint against GARY P. KOERNER, (RESPONDENT), alleging violation of the statutes and/or regulations controlling the practice of architecture, registered interior design or residential design in the state of Nevada.

The controversy and subject matter of this dispute which this settlement agreement is intended to resolve relates to information received that the Respondent violated NRS 623.360.1(a,b,c) by preparing preliminary drawings and presenting them to Greystone Communities for the Las Ventanas retirement community project in Nevada and by the use of the firm name, Three Architecture, Inc. on the project's site location sign.

WHEREAS, the parties mutually desire to settle the matter in an expeditious manner.

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**Jurisdiction**

The RESPONDENT acknowledges that the BOARD has the jurisdiction to impose a civil penalty of not more than \$10,000 for each violation of any provisions of Nevada Revised Statutes (NRS) Chapter 623 or any regulation adopted by the BOARD, and/or present violations of NRS 623.360 to the District Attorney of each county for prosecution by court action.

The RESPONDENT acknowledges that the BOARD will retain jurisdiction over this matter until all terms and conditions set forth in this settlement agreement have been met to the satisfaction of the BOARD.

**EXHIBIT "1"**

### **Administrative Penalty**

The RESPONDENT agrees to pay the sum of SEVEN THOUSAND, FIVE HUNDRED (\$7,500) DOLLARS as full and final settlement of the complaint on file against him. Upon satisfactory submission of the amount of this fine to the staff of the BOARD, the BOARD may execute the order attached to this settlement agreement which will result in the dismissal, with prejudice of the complaint.

### **Assurance of Discontinuance**

The RESPONDENT understands the statutes and/or regulations previously cited as having been violated and agrees to assure discontinuance of illegal acts including, but not limited to, holding himself out to the public or soliciting business as an architect; advertising or putting out any sign card, or other device which indicates to the public that the Respondent is an architect, or engaging in the practice of architecture without having a certificate of registration issued by the board.

### **Additional Terms**

The RESPONDENT acknowledges that he has informed the board of all prior, ongoing, pending or completed work in Nevada. The Respondent further acknowledges that failure to comply with any of the terms of this agreement constitutes independent grounds for disciplinary action.

### **Costs**

The RESPONDENT shall reimburse the BOARD for the costs of the investigation and prosecution of this matter in the amount of FIVE HUNDRED (\$500) DOLLARS.

### **Guilt**

The RESPONDENT admits that his conduct constitutes a violation of law regulating the practice of architecture and/or residential design and thereby subjects him to the possibility of criminal prosecution. The RESPONDENT has elected to enter into this settlement agreement rather than face the possibility of further disciplinary action by the BOARD.

### **Public Record**

The RESPONDENT acknowledges that once adopted by the BOARD, this settlement agreement and all associated documentation become a matter of public record.

### **Voluntary Waiver of Rights**

The RESPONDENT may at all times obtain the advice from competent counsel of his choice. The RESPONDENT has, at all times, received full cooperation of the Board's staff before making the decision to settle this matter. No coercion has been exerted upon the RESPONDENT, nor have any promises been made other than those reflected in this agreement.

### **Effect on Licensure Status**

Upon acceptance of this settlement agreement by the BOARD and total adherence to all provisions contained herein by the RESPONDENT, the parties agree that this matter shall be fully resolved and its resolutions shall have no bearing or effect on any future application for a Certificate of Registration by the RESPONDENT in Nevada.

### **Release from Liability**

In execution of this settlement agreement, the RESPONDENT for himself, his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN and the Nevada Attorney General and each of their members, agents and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgements, executions, claims and demands whatsoever known and unknown, in law or equity, that RESPONDENT ever had, now has, may have or claim to have against any or all of the persons or entities names in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration.

### **Indemnification**

The RESPONDENT, for himself/herself, his/her heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN, the Nevada Attorney General's office and each of their members, agents and employees in their individual and representative capacities against any and all claims, suits, demands, actions, debts, damages, costs, charges, and expenses, including court costs and attorney's fees against any persons entities as well as all liability, losses, and damages of any nature whatsoever that the persons and entities named in this paragraph shall have or may at any time sustain or suffer by reason of this investigation, this disciplinary action, this settlement or its administration.

### **Acceptance by the Board**

This settlement agreement will not be submitted for BOARD consideration until after it has been agreed to and executed by the RESPONDENT. The settlement agreement shall not become effective until it has been approved by a majority of the BOARD and endorsed by a representative member of the BOARD.

It is hereby agreed between the parties that this settlement agreement shall be presented to the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN with a recommendation for approval from the BOARD staff at the next regularly scheduled meeting of the BOARD.

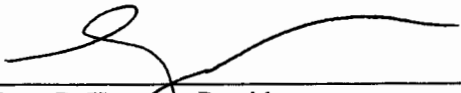
The RESPONDENT understands that the BOARD is free to accept or reject this settlement agreement and, if rejected by the BOARD, a formal disciplinary hearing on the complaint against the RESPONDENT may be scheduled. The RESPONDENT hereby agrees to waive any rights he might have to challenge the impartiality of the BOARD to hear the disciplinary complaint, if after review by the BOARD, this settlement agreement is rejected.

If the BOARD does not accept the settlement agreement, it shall be regarded as null and void. Admissions by the RESPONDENT in the settlement agreement will not be regarded as evidence against him at the subsequent disciplinary hearing. The RESPONDENT will be free to defend himself and no inferences against him will be made from his willingness to have entered into this agreement.

#### Complete Agreement

This settlement agreement consists of four pages and embodies the entire agreement between the BOARD and RESPONDENT. It may not be altered, amended or modified without the express consent of the parties. This settlement agreement is contingent upon payment of the administrative penalties within 15 days or the agreement is null and void.

Dated this 20 day of February, 2001

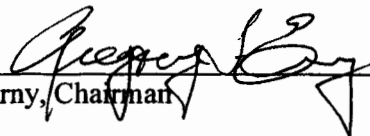
\*   
\_\_\_\_\_  
Gary P. Koerner, President  
Three Architecture, Inc.

#### Board Order

IT IS SO ORDERED.

Dated this 8<sup>TH</sup> day of MARCH, 2001.

NEVADA STATE BOARD OF ARCHITECTURE,  
INTERIOR DESIGN AND RESIDENTIAL DESIGN

By:   
\_\_\_\_\_  
Greg Erny, Chairman

# ThreeArchitecture

August 27, 2001

## NCARB

Annual Renewals Processing Center  
P.O. Box 31398  
Baltimore, MD 21263-398

RE: State of Nevada Consent Agreement

To Whom It May Concern:

In November of 1999 we were contacted by a client to consider doing a project in the State of Nevada. We immediately contacted the State registration Board to begin the registration process. We also did some conceptual site planning and limited schematics for the client to see if the site would work for their desired project. We received their information in September of 2000 and when we read the requirements we discovered that the conceptual and schematic work was in violation of their law and actually constituted practicing architecture in Nevada. In fact, we found out at that time that you could not even enter into contract negotiations with a client to practice architecture in Nevada without a temporary license.

The Nevada Board contacted me in the Fall of 2000 to inform me that we were in violation of their Rules and Regulations. Subsequently, we entered into a Consent Agreement and paid a fine. I was granted licensure to practice architecture in the State of Nevada under Gary P. Koerner on March 30, 2001. Currently, we are in the final stages of being granted licensure as Three Architecture, Inc. as a Foreign Corporation, which in fact, is also part of Nevada's Rules and Regulations.

Should you need any further information regarding this matter, please do not hesitate to contact me at (214) 559-4080.

Sincerely,



Gary P. Koerner  
President  
ThreeArchitecture, Inc.

GPK:usv

cc: Registration File

**EXHIBIT "2"**

5401 N. Central Expwy  
Suite Number 300  
Dallas, Texas 75205  
Tel 214.559.4080  
Fax 214.559.0990  
email@threearch.com  
www.threearch.com